

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

United States District Court		District <u>Southern District of Ohio</u>	
Name (under which you were convicted): <u>Kathleen Lance</u>		Docket or Case No.: <u>08-0096-01</u>	
Place of Confinement: <u>FPC Alderson, Alderson, WV</u>		Prisoner No.: <u>44786-061</u>	
UNITED STATES OF AMERICA		Movant (include name under which you were convicted) <u>Kathleen Lance</u>	
v.			

**MOTION**

1. (a) Name and location of court that entered the judgment of conviction you are challenging:  
United States District Court  
Southern District of Ohio  
200 West Second St. Dayton, OH 45402
  
- (b) Criminal docket or case number (if you know): 08-00096-01
  
2. (a) Date of the judgment of conviction (if you know):  
Dec. 10, 2009
  
- (b) Date of sentencing: May 2010
  
3. Length of sentence: 64 months
  
4. Nature of crime (all counts):  
Counts 1-14 wire fraud 18 U.S.C. § 1343, § 1346(2)  
Count 15 theft of government funds 18 U.S.C. § 641(2)  
Count 16 use of unauthorized access device 18 U.S.C. § 1029(a)(2)  
Counts 17-22 aggravated identity theft 18 U.S.C. § 1028A(2)
  
5. (a) What was your plea? (Check one)  
 (1) Not guilty ☒ (2) Guilty ☐ (3) Nolo contendere (no contest) ☐  
 (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?
  
6. If you went to trial, what kind of trial did you have? (Check one)      Jury ☐      Judge only ☒

FILED  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
DAYTON, OHIO  
2011 OCT 12 AM 11:20

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☒ No ☐
8. Did you appeal from the judgment of conviction? Yes ☒ No ☐
9. If you did appeal, answer the following:

- (a) Name of court: *United States Court of Appeals for the Sixth Circuit*
- (b) Docket or case number (if you know): *10-3710*
- (c) Result: *The district's court's judgment is affirmed*
- (d) Date of result (if you know): *Sept. 12, 2011*
- (e) Citation to the case (if you know):
- (f) Grounds raised: *(1) Conviction is not supported by sufficient evidence*  
*(2) Sentence is unreasonable*

- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

- (1) Docket or case number (if you know):
- (2) Result:
- (3) Date of result (if you know):
- (4) Citation to the case (if you know):
- (5) Grounds raised:

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court:
- (2) Docket or case number (if you know):
- (3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result:

(8) Date of result (if you know):

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result:

(8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

### GROUND ONE: Ineffective Trial Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

- (1) Failure to investigate recent developments in the law, and to request a continuance
  - (2) Failure to raise double jeopardy issue in 18 U.S.C. 1028(a)(2) and 18 U.S.C. 1029
  - (3) Failure to seek disqualification of the judge
  - (4) Failure to prevent a conflict of interest (i.e. Vocalink)
  - (5) Failure to argue monetary amount in regards to Vocalink; and was given evidence that could have been submitted
  - (6) Failure to require the government to furnish the analysis on the computers
  - (7) Failure to argue payments made to the Credit Card Accounts (Mrs. Nelson)
  - (8) Failure to submit into evidence chase statements & letter
  - (9) Failure to submit police report in regards to Steve Lance, Jenna Harleman
  - (10) Failure to submit complaint against Steve Lance to the Indiana Attorney General's Office, i.e. complaint on Steve preparing her return & not giving refund
  - (11) mentioning to Judge in chambers that previous criminal history is reason for my decision
- (b) Direct Appeal of Ground One: To go with a bench trial.

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Appeal lawyer chose to not take my argument of this issue seriously, to the appeals court.

### (c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

## GROUND TWO: Conflict of Interest - Judge Rose

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Vocalink Language Services holds the interpreting contract for the Federal building in Dayton, OH. They supply all of the interpreters. Ms. Rodriguez, owner and C.E.O. of Vocalink; and Ms. Nelson, former employee of Vocalink have both been interpreters in the Dayton Federal building. This clearly constitutes a business relationship.

The conflict of interest was also apparent in which Judge Rose knows both of the individuals, and sees interpreters on a constant basis from Vocalink.

**(b) Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

*Appeal Lawyer Chose to not take into consideration this issue.*

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

### GROUND THREE: Prosecutor Withholding Evidence

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

- (1) Computer Analysis given an exhibit #, but missing from the exhibit.
- (2) Letter mailed to courtroom by an individual who said to have knowledge that pertained to the case, said of the "true criminals." The letter intercepted and contents not revealed.
- (3) Withholding evidence of the taxpayer refunds frozen in a chase account
- (4) Withholding evidence of payments made by Ms. Nelson to the credit cards she claimed open fraudulently and reimbursement of her payments
- (5) Withholding evidence of Ms. Rodriguez being paid and no explanation how the amount was arrived at over \$30,000 when the actual amount Ms. Rodriguez loaned & was reimbursed was just over \$8,000.

### (b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Appeal Lawyer chose not to.

### (c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

#### GROUND FOUR: Ineffective Counsel on appeal

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

- (1) Brief was not in compliance with the Federal Rules of the Appeals Court
- (2) Did not take into serious consideration issues raised in this motion
- (3) Did not research developments in law that pertained to my favor (ie Skilling and Bonilla)
- (4) poorly written brief
- (5) Incorrect information put in brief and would not change to correct the information for accuracy and truth.



**(b) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

*He is my Appeal lawyer.*

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

With exception for motion to appoint new counsel, none of the grounds in this motion have been previously presented in some federal court. I brought these issues up with the appeal lawyer and he chose to not include these issues.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing:

Mr. Robert Jensen

(b) At arraignment and plea:

Mr. Robert Jensen

(c) At trial:

Mr. Robert Jensen

(d) At sentencing:

Mr. Robert Jensen

(e) On appeal: Mr. C. Ransom Hudson  
639 main st.  
Cincinnati, OH 45202

(f) In any post-conviction proceeding:

(g) On appeal from any ruling against you in a post-conviction proceeding:

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\*

*I was required to wait for the decision from the Court of Appeals before 2255 could be filed.*

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\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

(1) Vacate Sentence  
(2) Overturn Convictions  
(3) Immediate Release from Prison  
or any other relief to which movant may be entitled.

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Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct  
and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on October 04, 2011  
(month, date, year).

Executed (signed) on 10/4/2011 (date).

Kathleen Lance  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.